

AUCTION SALE

("the sale")

of thoroughbred horses by

LIVESTOCK AUCTIONS

("the convenor")

CONDITIONS OF SALE AND PURCHASE

("the Conditions")

1. INTRODUCTION

- 1.1. The Conditions shall be binding on every seller and purchaser of horses at the sale ("seller" and "purchaser" respectively).
- 1.2. Any entry made in the sales documents shall be:
 - 1.2.1. prima facie proof of the sale and purchase of a horse in terms of the Conditions; and
 - 1.2.2. deemed to constitute an acceptance of the Conditions by the seller and purchaser concerned.
- 1.3. For the purposes of this agreement:
 - 1.3.1. "sale document" shall include any of the following documents:
 - 1.3.1.1. completed and/or signed by or on behalf of the seller –
an entry form;
a reserve/valuation form; or
any power of attorney or agent authorisation form;
 - 1.3.1.2. completed and/or signed by or on behalf of the purchaser –
a credit request;
an application for a buyer's card;
an entry in the vendor roll;
a sale's invoice;
a promissory note; or
any power of attorney or agent authorisation form;
 - 1.3.2. "auctioneer" shall mean the auctioneers appointed for the conduct of the sale;
 - 1.3.3. "horse" shall mean a thoroughbred horse;
 - 1.3.4. "sales ring" shall mean the ring through which the horses are paraded and sold;
 - 1.3.5. "purchase price" shall be the amount bid by the purchaser in respect of the horse plus VAT thereon;
 - 1.3.6. "the debt" shall mean the total amount owing by a purchaser in respect of the purchase of a horse and shall include but is not limited to, the purchase price, interest which accrues on the purchase price, insurance premiums, the cost of maintaining and stabling the horse, the amount paid in terms of 11.9 and all other amounts referred to in the Conditions;
 - 1.3.7. "the shortfall" shall mean the difference, if any, between the purchase price realised at a sale contemplated in 11.3, and the amount of debt;

- 1.3.8. "NHRA" shall mean the National Horseracing Authority of Southern Africa;
 - 1.3.9. "VAT" shall mean value added tax;
 - 1.3.10. any reference to the "purchase price" shall be deemed, unless the context requires otherwise, to exclude VAT;
 - 1.3.11. any reference to "vendor" in the conditions and/or the sale documents shall be deemed, unless the context requires otherwise, to be a reference to "seller";
 - 1.3.12. any reference to the seller, purchaser or auctioneer shall be deemed, unless the context requires otherwise, to include a reference to the respective agents, representatives and employees of the seller, purchaser or auctioneer;
- 1.4. Headings have been inserted in the Conditions for convenience only and shall not affect the interpretation or meaning thereof.
- 1.5. Words importing one gender shall include the other gender and words supporting the singular shall include the plural and vice versa.
2. NO WARRANTIES OR REPRESENTATIONS
- 2.1. Neither the convenor, the seller nor the auctioneer makes any representation, or warranty whatsoever:
 - 2.1.1. in respect of any title to a horse offered on the sale;
 - 2.1.2. in respect of the correctness of any statement or information whatsoever pertaining to a horse including any statement or information contained in any sale documents or advertising/sale catalogues, and neither the convenor, the seller nor the auctioneer shall be liable for any error in any such statement or information; or
 - 2.1.3. that a particular horse will be suitable for any purpose for which it has been bought.
 - 2.2. Neither the convenor, the seller nor the auctioneer accepts any responsibility for:
 - 2.2.1. any defects or error in relation to the pedigree, description, condition or other particulars relating to a horse, including, without limitation, the performance of a horse; or
 - 2.2.2. any loss or damage suffered by any purchaser as a result of the accidental omission of any details of or reference to a horse entered for sale.
3. DUTY TO DISCLOSE
- 3.1. A purchaser shall be entitled to cancel the sale of a horse found, within 48 hours of its sale, to have been unsuitable for its purpose at the time of the sale, provided that:
 - 3.1.1. the existence of any such condition was not announced at the time of the sale of the horse concerned;
 - 3.1.2. the purchaser produces, at his own expense, a veterinary certificate certifying the existence at the time of the sale, of any such condition;

- 3.1.3. the purchaser satisfies the convenor or its authorised nominee/s that the seller of such a horse knew or ought to have known of the existence of any such condition;
- 3.1.4. the purchaser has given written notice of his intention to cancel the sale to the convenor within 48 hours of the date of the sale of the horse concerned;
- 3.1.5. the purchaser shall be obliged, at his own expense, to return the horse to the seller; and
- 3.1.6. no purchaser shall be entitled to rely upon the provisions of 3 if he is in breach of any of the provisions of 10 below.

4. SALE TO BE VOETSTOOTS

Except as specifically provided for in the Conditions, the sale of all horses shall be "Voetstoots".

5. GENERAL DISCLAIMER

5.1. Neither the convenor nor the auctioneer shall be responsible for any damage, loss, injury and/or death caused by or to any horse entered for the sale, while such horse is under the control or supervision of the convenor or the auctioneer.

5.2. Neither the convenor, the seller or the auctioneer will be responsible for any damage, loss, injury and/or death caused to any person and/or property at the sale.

6. BIDDING

6.1. Subject to the provisions of 6.3 below, the highest bidder whose bid is accepted by the auctioneer, shall be the purchaser of the horse; provided that, if a dispute arises between two bidders in respect of the sale of the horse, the auctioneer may, prior to the conclusion of the sale, and in his sole and absolute discretion:

- 6.1.1. re-auction the horse in dispute; or
- 6.1.2. declare who the purchaser of the horse is.

6.2. The decision of the auctioneer shall, in the circumstances specified in 6.1 above, be final and binding on all parties.

6.3. Any reserve price in respect of a particular horse shall be communicated to the auctioneer by the seller prior to the commencement of the sale and the auctioneer shall have the right to bid as agent on behalf of the seller on such reserve price.

6.4. The auctioneer shall determine and regulate the advance of the bidding and shall be entitled, in his sole discretion, to reject any bid, without giving any reasons for such rejection. The amount of the bid shall not include VAT.

6.5. If, after the fall of the hammer, it transpires that the person to whom a horse was sold was not, at the time of such sale, in possession of a valid buyer's card, or has exceeded his credit limit, that sale, in the discretion of the convenor, may be declared null and void and the horse shall immediately be reaucted.

7. EXPORT AND IMPORT REQUIREMENTS

The purchaser of any horse requiring to be exported shall be responsible for ensuring that all requirements necessary for the export of such horse are met. The purchaser shall not be absolved from complying with his obligations, in particular his payment obligation, in terms of the Conditions by virtue of an allegation of impossibility or performance or force majeure in regard to compliance with the necessary requirements.

8. DOMICILIUM

The physical address provided by the purchaser in his application for a buyer's card shall be deemed, for the purposes of the Conditions, to be his chosen domicilium citandi et executandi.

9. RISK, OWNERSHIP AND MAINTENANCE COSTS

9.1. All risk and responsibility including but not limited to the feeding and watering, general well-being and safety in respect of a horse sold at the sale shall pass to the purchaser on "the fall of the hammer".

9.2. Ownership in a horse shall only pass to the purchaser upon payment of the debt. Until the debt has been paid in full, the purchaser shall not be entitled to have the horse registered in his name or that of his nominee.

9.3. All risk in respect of a horse to be sold at the sale shall remain with the seller until sold to the purchaser on the fall of the hammer.

9.4. The purchaser shall, until such time as the debt has been paid in full, keep the convenor advised of the physical address at which the horse purchased is being kept and the convenor shall have the right to inspect the horse at any stage prior to payment of the debt.

10. PARTICIPATION REQUIREMENTS AND PAYMENTS

10.1. No prospective purchaser shall be authorised to bid at a sale unless and until he is in possession of a valid and current buyer's card issued by the convenor in respect of the sale in question. Completion of such application shall be deemed to constitute acceptance by such purchaser of the Conditions.

10.2. The convenor shall only issue a prospective purchaser with a buyer's card on the following conditions:

10.2.1 the convenor will be entitled to approve a credit limit;

10.2.2 the prospective purchaser shall not be entitled to exceed the credit limit in respect of purchases at the sale. Once that limit has been reached, the buyer's card shall be withdrawn unless and until the convenor approves, in writing, an increased credit limit;

10.2.3 should a purchaser exceed the credit limit, the convenor shall be entitled, but not obliged, to apply the provisions of 6.5

10.3. Where a horse is purchased by any person not a South African citizen or permanently resident in South Africa, the purchase price shall be secured by a commercial letter of credit in a form acceptable to the convenor.

- 10.4. No horse may be removed from the sales complex before a release form in respect of that horse has been issued by the convenor. Before the release form is issued, the convenor may require the purchaser to sign and/or lodge such document as the convenor deems necessary, for example a promissory note and/or application for credit and/or a commercial letter of credit and/or another suitable form of security, together with such approval as may be deemed necessary in the circumstances.
- 10.5. The purchaser of a horse shall be obliged to pay any VAT payable in respect of such horse.
- 10.6. The purchaser of a horse shall be obliged, in addition to the purchase price, to pay a further sum of R3,000 plus VAT, by way of a race levy towards the funding of the Ready To Run Cup; in the event that the race does not take place for any reason, such sum shall be refunded to the purchaser.

11. LEGAL REMEDIES, REPOSSESSIONS AND COSTS

- 11.1. The purchaser agrees and acknowledges that in the event of:
 - 11.1.1 the purchaser materially breaching any condition contained in the Conditions; or
 - 11.1.2 the purchaser failing to pay the debt in full within 30 days from the date of the sale, or within any such extended period as may have been specifically agreed upon in writing with the convenor or the seller, as the case may be; or
 - 11.1.3 the purchaser dying; or
 - 11.1.4 the purchaser seeking the refuge of a debt counsellor and/or his affairs being placed under debt counselling; or
 - 11.1.5 the purchaser's estate being placed under any order of provisional or final sequestration, provisional or final winding-up or provisional or final judicial management as the case may be; then and in that event the convenor or the seller shall, without notice and without detracting from any other remedies which may be available, be entitled to summarily cancel the sale of any horse to the purchaser (in respect of which monies are owing by the purchaser) and to repossess such horse ("the repossessed horse"); or to claim specific performance of all the purchaser's obligations whether or not such obligations would otherwise then have fallen due for performance; in either event without prejudice to the convenor or the seller's rights to claim damages.
- 11.2. Notwithstanding the cancellation of the sale, the convenor or the seller shall be entitled to retain:
 - 11.2.1 any sums paid by the purchaser in respect of the debt; and/or
 - 11.2.2 the deposit or any portion thereof which was offset against the purchase price, in reduction of damages, if any, which may be suffered by the convenor and/or the seller by reason of the breach by the purchaser and the resultant cancellation of the agreement of sale.

- 11.3. Should the convenor or the seller elect to cancel the sale and repossess the horse sold, they shall be entitled, but not obliged, to attempt to resell the repossessed horse at any future sale designated by the convenor or seller. If the repossessed horse is sold, the purchase price, if and when paid in full, shall be used in the reduction of the shortfall, if any, which may have resulted by reason of the breach by the purchaser and resultant cancellation of the agreement of sale. The convenor shall also be entitled to resell in absentia any horse in respect of which removal or repossession has been obstructed or refused.
- 11.4. In the event of the convenor or the seller instructing attorneys to collect from the purchaser any amount owing, the purchaser agrees to pay all costs on the scale as between attorney and own client, including collection charges, whether or not summons is actually issued.
- 11.5 The purchaser and the seller consent to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) having jurisdiction under Section 28 of the said Act, notwithstanding that the claim may exceed the normal jurisdiction of the Magistrate's Court as to the amount. The convenor or the seller shall, in its discretion, be entitled to proceed against the purchaser in any other court of competent jurisdiction, notwithstanding the foregoing. The purchaser specifically consents to the jurisdiction of the Magistrate's Court for the district of Mpofana (Mooi River), or to the High Court of KZN, sitting at Pietermaritzburg.
- 11.6 No relaxation or indulgence granted to the purchaser by the convenor at any time shall be deemed to be a waiver of any of the convenor's rights in terms hereof, and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against the convenor.
- 11.7 Should a dispute arise regarding the purchase of a horse, the purchaser shall be obliged, if required to do so, to return the horse at his own expense to a party nominated by the cancelling party, being either the convenor or the seller. The nominated party shall maintain the horse until the dispute has been resolved on condition that the purchaser shall be liable for the costs of stabling and maintaining the horse, including veterinary and farriery charges and such like, which amounts he shall pay to the nominated party on demand.
- 11.8 No right of set-off between a purchaser and a seller shall be valid or recognised by the convenor, and shall not impinge on the convenor's rights as defined herein.
- 11.9 Where any person claims to have a lien over any horse in respect of which the purchase price has not been paid, the convenor or seller has the right to settle such lien as it deems fit to recover possession of the horse. Any monies paid in the discharge of any lien shall form part of the debt which the convenor or seller shall be entitled to recover from the purchaser in addition to any other amounts which may be payable.

12. AGENTS

12.1. Any person acting as an agent on behalf of a principal:

- 12.1.1 may be required, prior to his participation in the sale, to establish to the satisfaction of the convenor, his authority to so act and, if required, to furnish the necessary documentation in substantiation thereof;
- 12.1.2 shall, if he is the purchaser, disclose the name and address of his principal at “the fall of the hammer”;
- 12.1.3 agrees to be bound by the Conditions;
- 12.1.4 shall be jointly and severally liable for the timeous fulfilment of all the obligations of his principal in terms of the Conditions, renouncing the benefits of division and excussion.

12.2. Notwithstanding anything to the contrary contained in the Conditions, any person acting on behalf of another, shall be deemed to have full legal capacity to do so.

13. COMMISSIONS

- 13.1. Subject to the remaining provisions of 13, the seller shall be liable to pay any such commission as may fall due to the convenor plus VAT on the price realised in respect of any horse accepted for the sale.
- 13.2. Acceptance of a horse for sale shall be deemed to have occurred upon the receipt of details by the convenor relating to such horse for its sale catalogue.
- 13.3. A commission shall be payable on the price realised if the horse is sold by auction or private treaty by the convenor, the seller, his agent or representative, at any time during the period commencing upon acceptance of the horse’s entry and concluding 30 days after the sale has been held or the date upon which the sale had been advertised to be held.
- 13.4. The minimum price that will be accepted for any horse shall be R15,000 (excluding VAT).

14. RIGHTS AND OBLIGATIONS OF A SELLER

- 14.1. The seller of a horse shall be entitled to receive from the convenor within 35 days of the last day of the sale, payment of the purchase price realised, less commissions and other charges deductible in terms of the conditions;
- 14.2. The convenor shall be entitled to deduct, in addition to the amounts referred to in 14.1, any additional amounts due to the convenor, from the proceeds of the sale of any of the seller’s horses which have been entered, whether the seller is acting as a principal, as an agent, or a partner, by the seller, any of his principals, or any of his partners.
- 14.3. The convenor shall be obliged to pay any amount which is due to the seller directly into the bank account nominated by the seller on the prescribed form;
- 14.4. Notwithstanding anything contained herein, the convenor shall be obliged to pursue payment of the debt by the purchaser and, in the process, exercise all the rights of ownership in respect of the horse sold. For the purposes of the foregoing, the seller, as owner or duly authorised agent of the owner:
 - 14.4.1 hereby irrevocably authorises the convenor to exercise all status, rights and powers that the owner may exercise, including, but not limited to the protection and enforcement of ownership, the right to complete and sign any change of

ownership form and the right to institute any legal proceeding regarding repossession of the horse;

14.4.2 cede to the convenor if called upon, all right, title and interest in and to all remedies that the seller may have in law against the purchaser in respect of the sale of the horse in question.

14.5. The seller acknowledges that the convenor shall not be liable for any loss incurred by the seller as a result of the breach of the purchaser of the Conditions. In addition, the convenor shall not be liable for any loss or damages sustained by the seller as a direct result of the convenor's omission or refusal, for whatever reason, to enforce any of its or the seller's rights in terms of the Conditions, or as a result of granting the purchaser credit facilities.

15. THE CONVENOR'S ROLE

The purchaser and the seller acknowledge and agree that, save as is otherwise provided for in the Conditions, the convenor acted at all times as agent only. Accordingly, any remedy which the purchaser may have in law shall lie against the seller and any remedy which the seller may have in law shall lie against the purchaser, provided that nothing contained in this clause shall affect any of the convenor's rights in terms of the Conditions.

16. CONVENOR AND SELLER NOT LIABLE FOR ANY LOSS OR DAMAGE

No person who attends a sale or who is present on any property under the control of the convenor shall have any claim of any nature whatsoever and however arising (including, but without limitation to the foregoing, any claims for damage to or loss or destruction of any horse or other property or injury to such person), against the convenor or the seller arising out of any cause whatsoever.

17. RIGHT OF ADMISSION

The convenor reserves the right of admission and shall be entitled at any stage to require any person to vacate with immediate effect any premises under its control.

18. NO VARIATION EXCEPT IN WRITING

No variation, alteration or cancellation not governed in the sales catalogue, shall be of any force and effect unless reduced to writing and signed by the convenor or the seller.

19. AGREEMENT BINDING ON PARTIES

This agreement shall be binding upon every seller and every purchaser and under no circumstances may it be cancelled, set aside, varied or altered in any manner unless reduced to writing and signed by duly authorised employee or agent of the convenor or the seller.